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Interpretation of the Supreme People's Court on Certain Issues relating to Application of the Arbitration Law of the People's Republic of China (Revision 2008)

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Pursuant to the Arbitration Law of the People's Republic of China and the Civil Procedural Law of the People's Republic of China, certain issues relating to the applicable law in the hearing of arbitration cases by the people's court are hereby interpreted as follows:

Article 1 An arbitration agreement in "other written format" as provided for in Article 16 of the Arbitration Law includes any agreement requesting for arbitration in the form of a contract, letter or electronic text (including telegraph, telex, facsimile, electronic data interchange and e-mail).

Article 2 Where the matters agreed upon for arbitration are contractual disputes, any dispute arising as a result of the execution, validity, modification, assignment, performance, breach, interpretation or rescission of the contract may be deemed as a subject matter of arbitration.

Article 3 Where the name of the arbitration agency provided in the arbitration agreement is inaccurate but is nevertheless identifiable, the arbitration agency shall be deemed to have been selected.

Article 4 Where an arbitration agreement only provides the applicable arbitration rules, it shall be deemed that no arbitration agency is stipulated under the arbitration agreement, unless the parties have concluded a supplementary agreement, or an arbitration agency may be determined pursuant to the arbitration rules provided.

Article 5 Where an arbitration agreement provides for two or more arbitration agencies, the parties may negotiate to choose one of them for arbitration; where the parties are unable to agree on the choice of an arbitration agency, the arbitration agreement shall be deemed invalid.

Article 6 Where an arbitration is agreed to be conducted by an arbitration agency at a fixed locality and only one arbitration agency exists at that locality, that arbitration agency shall be deemed as the arbitration agency stipulated under the arbitration agreement. Where there are two or more arbitration agencies at that locality, the parties may negotiate to select one of the agencies for arbitration; where the parties concerned are unable to agree on the choice of an arbitration agency, the arbitration agreement shall be deemed invalid.

Article 7 Where the parties agree that a dispute may be submitted to an arbitration agency for arbitration or filed with the people's court for commencement of legal proceedings, the arbitration agreement shall be invalid, unless one party has submitted an arbitration application to an arbitration agency but the other party failed to object within the time limit stipulated in the second paragraph of Article 20 of the Arbitration Law.

Article 8 Where a party is merged or divided upon the conclusion of an arbitration agreement, the arbitration agreement shall be binding on all successors to the rights and obligations of the party.

Where the death of a party occurred after the conclusion of an arbitration agreement, the arbitration agreement shall be binding on the party's successor who succeeds the rights and obligations to the subject matter of arbitration.

The provisions in the preceding paragraphs shall not apply where the parties have agreed otherwise in the arbitration agreement.

Article 9 An arbitration agreement shall bind a transferee of any creditor rights and debts transferred whether in whole or in part, unless the parties agreed otherwise, or where the transferee clearly objected or was unaware of the existence of a separate arbitration agreement at the time of the transfer.

Article 10 Where a concluded contract has not taken effect or has been revoked, the provisions in the first paragraph of Article 19 of the Arbitration Law shall apply in the determination of the arbitration agreement's validity.

Where the parties reach an arbitration agreement at the time when they conclude the contract, the validity of the arbitration agreement shall not be affected by whether the contract has taken effect.

Article 11 Where the contract provides that a valid arbitration clause of another contract or document shall apply in the resolution of a dispute arising from the first-mentioned contract, the parties shall apply for arbitration pursuant to such an arbitration clause in the event of a contractual dispute.

Where a foreign-related contract is governed by the arbitration provision of a relevant international treaty, the parties shall apply for arbitration pursuant to the arbitration provision in the international treaty in the event of a contractual dispute.

Article 12 Where a party applies to the people's court to determine the validity of an arbitration agreement, the case shall come under the jurisdiction of the intermediate people's court at the location of the arbitration agency as provided for in the arbitration agreement; where the arbitration agreement fails to describe an arbitration agency clearly, the case shall come under the jurisdiction of the intermediate people's court at the location where the arbitration agreement was concluded, or the place of residence of the respondent.

Where a party applies for the determination of validity of a foreign-related arbitration agreement, the case shall come under the jurisdiction of the intermediate people's court at the location of the arbitration agency as provided for in the arbitration agreement, or the location where the arbitration agreement was concluded, or the place of residence of the applicant or respondent.

Where a party applies for the determination of validity of an arbitration agreement involving maritime or maritime commerce disputes, the case shall come under the jurisdiction of the maritime court at the location of the arbitration agency as provided for in the arbitration agreement, or the location where the arbitration agreement was concluded, or the place of residence of the applicant or respondent; where no maritime court is established at the said locations, the case shall come under the jurisdiction of the nearest maritime court.

Article 13 Pursuant to the second paragraph of Article 20 of the Arbitration Law, where a party has not objected to the validity of an arbitration agreement before the opening session of hearings conducted by the arbitration tribunal, but the party subsequently applies to the people's court to determine the invalidity of the arbitration agreement, the people's court shall not hear such a case.

Where an arbitration agency has decided on the validity of an arbitration agreement and a party subsequently applies to the people's court to determine the validity the arbitration agreement or overturn the decision of the arbitration agency, the people's court shall not hear such a case.

Article 14 The opening session of hearings mentioned in Article 26 of the Arbitration Law shall mean the first session of arbitration hearings organized by the people's court after the period for pleadings has expired and it shall not include the activities in pre-hearing procedures.

Article 15 The people's court shall, in the determination of validity of an arbitration agreement, form a collegiate panel to conduct an examination and make inquiry to the parties concerned.

Article 16 The applicable law for the determination of validity of a foreign-related arbitration agreement shall be the applicable law as agreed upon by the parties; where the parties have not agreed upon an applicable law but have agreed upon the place of arbitration, the law of that place shall apply to the arbitration; where the parties have agreed upon neither the applicable law nor the place of arbitration or where they fail to clearly agree upon the place of arbitration, the law of the place where the court is located shall apply.

Article 17 Where a party applies to overturn an arbitration award by reason of an event that is not stipulated in Article 58 of the Arbitration Law or Article 258 of the Civil Procedural Law, the people's court shall not uphold the application.

Article 18 The phrase "no arbitration agreement" as mentioned in Item (1) of the first paragraph of Article 58 of the Arbitration Law shall mean the parties did not enter into an arbitration agreement. An arbitration agreement that is deemed invalid or is being revoked shall also be deemed as a case of having "no arbitration agreement".

Article 19 Where a party applies for an arbitration award to be overturned by reason that the arbitrated matter under the arbitration award is outside the scope of the arbitration agreement, the people's court shall overturn the section of the arbitration award that is outside the scope of the agreement where the claim is verified to be true. Where the section the arbitration award that is outside the scope of the arbitration agreement cannot be severed from the remaining arbitrated matters under the arbitration award, the people's court shall overturn the arbitration award.

Article 20 The phrase "contravention of statutory procedures" as mentioned in Article 58 of the Arbitration Law shall mean the circumstances wherein the arbitration procedures contravene provisions in the Arbitration Law and where arbitration rules selected by parties may affect the correct ruling of a case.

Article 21 Under either of the circumstances where a party applies to revoke an arbitration award in China, the people's court may, pursuant to Article 61 of the Arbitration Law, notify the arbitration tribunal to conduct a new round of arbitration:

(1) the arbitration award is based on forged evidence; or

(2) the counterparty has concealed evidence which affects a fair ruling.

The people's court shall state the specific reasons for a new round of arbitration in the notice.

Article 22 Where an arbitration tribunal conducts a new round of arbitration pursuant to the period stipulated by the people's court, the people's court shall rule on the suspension of overturning procedures; where the arbitration tribunal does not conduct a new round of arbitration, the people's court shall rule on the reinstatement of overturning procedures.

Article 23 A party that does not accept the new arbitration award may apply to the people's court pursuant to Article 58 of the Arbitration Law within six months from the date of delivery of the new arbitration award to overturn the award.

Article 24 Where a party applies to overturn an arbitration award, the people's court shall form a collegiate panel to try the case and make inquiry of the parties concerned.

Article 25 Where the people's court accepts an application by one party to overturn an arbitration award and the other party subsequently applies for the enforcement of the arbitration award which is also accepted by the people's court, the people's court shall rule on setting aside enforcement upon acceptance of the enforcement application.

Article 26 The people's court shall not support a party that pleads for a suspension of enforcement of the arbitration award in the enforcement proceedings by quoting the same reasons used in the same party's rejected application for overturning an arbitration award.

Article 27 The people's court shall not support a party that subsequently asserts the overturn of an arbitration award by reason of invalidity of the arbitration agreement, or makes a plea for the suspension of enforcement of the arbitration award when the party has not objected to the validity of an arbitration agreement during arbitration proceedings.

The people's court shall support a party that has objected to the validity of an arbitration agreement during arbitration proceedings and subsequently asserts the overturn of the arbitration award by reason of the objection, following the arbitration award made or a plea made for the suspension of enforcement of the arbitration award, provided the assertion is verified to comply with the provisions of Article 58 of the Arbitration Law or Article 213 and Article 258 of the Civil Procedural Law.

Article 28 The people's court shall support a party that requests for the non-enforcement of an arbitration conciliation document or an arbitration award made pursuant to a settlement agreement between the parties.

Article 29 The application by a party to enforce of an arbitration award shall come under the jurisdiction of the intermediate people's court at the place of residence of the party against whom the award is being enforced or at the location of the property against whom the award is being enforced.

Article 30 The people's court may, pursuant to the actual requirements of the hearing for an application for the overturn or enforcement of an arbitration award, require the arbitration agency to explain or to submit the arbitration case file for perusal.

A ruling that is made by the people's court in the process of handling a case which involves arbitration may be forwarded to the relevant arbitration agency.

Article 31 This Interpretation shall be implemented from the date of promulgation.

Where there is any inconsistency between this Interpretation and previously promulgated judicial interpretations, this Interpretation shall prevail.



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